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5 **UNITED STATES DISTRICT COURT**  
6 **SOUTHERN DISTRICT OF CALIFORNIA**  
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8 JOSEPH SHORTAL; JOHN  
9 STAMATIS; PAUL BARDEN;  
10 KENNETH VAUGHAN; MICHAEL  
11 SIMON,

Plaintiffs,

12 vs.

13 HESSGEN, INC.; BRIAN HESS;  
14 ANDY MILLS; DOES 1-10, inclusive,

Defendants.

15 HESSGEN, INC.; BRIAN HESS,

Cross Claimants,

16 vs.

17 JACK MOTT; ANDY MILLS; ROES 1-  
18 10, inclusive,

Cross Defendants.

19  
20 ANDY MILLS,

Cross Claimant,

21 vs.

22  
23 GEORGE MALASEK; DAVID  
24 RUTKOSKE; BRIAN HESS;  
HESSGEN, INC.; JACK MOTT,

Cross Defendants.

25 HAYES, Judge:

26 The matter before the Court is the Motion to Withdraw as Attorney of Record for  
27 Defendants/Cross-Complainants/Cross-Defendants Hessgen, Inc. and Brian Hess  
28 (“Motion to Withdraw”) filed by the La Jolla Law Group (“LJLG”). (ECF No. 40).

CASE NO. 12cv2845 WQH (NLS)

**ORDER**

1 On June 11, 2013, LJLG filed a motion to withdraw as counsel of record for  
 2 Hessgen, Inc. and Brian Hess “on the grounds that, despite extensive attempts over the  
 3 last several weeks, LJLG has been unable and continues to be unable to adequately  
 4 communicate with [Hessgen, Inc. and Brian Hess], severely prejudicing LJLG’s ability  
 5 to defend the allegations of the Complaint and Cross-Complaint ..., as well as prosecute  
 6 [Hessgen, Inc. and Brian Hess’] Cross-Complaint.” (ECF No. 40 at 2). The motion  
 7 also asserts that Hessgen, Inc. and Brian Hess have breached their fee agreement with  
 8 LJLG by failing to pay for services rendered and costs incurred in this action. *See id.*

9 An attorney may not withdraw as counsel except by leave of court. *Darby v. City*  
 10 *of Torrance*, 810 F. Supp. 275, 276 (C.D. Cal. 1992). “The decision to grant or deny  
 11 counsel’s motion to withdraw is committed to the discretion of the trial court.” *Irwin*  
 12 *v. Mascott*, 2004 U.S. Dist. LEXIS 28264, at \*4 (N.D. Cal. December 1, 2004) (citing  
 13 *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir. 1982)). Among  
 14 other things, courts ruling upon motions to withdraw as counsel have considered the  
 15 following factors: “(1) the reasons why withdrawal is sought; (2) the prejudice  
 16 withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the  
 17 administration of justice; and (4) the degree to which withdrawal will delay the  
 18 resolution of the case.” *Irwin*, 2004 U.S. Dist. LEXIS 28264, at \*4.

19 In the Southern District of California, Local Civil Rule 83.3(g)(3) provides: “A  
 20 notice of motion to withdraw as attorney of record must be served on the adverse party  
 21 and on the moving attorney's client.... A declaration pertaining to such service must be  
 22 filed. Failure to make service as required by this section or to file the required  
 23 declaration of service will result in a denial of the motion.” Civ. L.R. 83.3(g)(3). Local  
 24 Civil Rule 83.4(b) requires counsel to “comply with the standards of professional  
 25 conduct required of members of the State Bar of California,” and states that “[t]his  
 26 specification will not be interpreted to be exhaustive of the standards of conduct.” Civ.  
 27 L.R. 83.4(b).

28 California Rule of Professional Conduct 3-700 provides:

1 (A) In General

2 (1) If permission for termination of employment is required by the  
3 rules of a tribunal, a member shall not withdraw from employment in a  
4 proceeding before that tribunal without its permission.

5 (2) A member shall not withdraw from employment until the  
6 member has taken reasonable steps to avoid reasonably foreseeable  
7 prejudice to the rights of the client, including giving due notice to the  
8 client, allowing time for employment of other counsel, ... and complying  
9 with applicable laws and rules....

10 (C) Permissive Withdrawal

11 [A] member may not request permission to withdraw in matters pending  
12 before a tribunal, and may not withdraw in other matters, unless such  
13 request or such withdrawal is because:

14 (1) The client ... renders it unreasonably difficult for the member  
15 to carry out the employment effectively, or ... breaches an agreement or  
16 obligation to the member as to expenses or fees....

17 Rules Prof. Conduct, rule 3–700.

18 LJLG submits the declaration of its attorney of record in this case, Kent L. Sharp,  
19 who states:

20 This Motion is necessary due to me and my staff's inability to  
21 communicate with our clients, the HESSGEN parties.

22 HESS responded to one of my multiple attempts to contact him and on  
23 April 29, 2013, I met with HESS to discuss the above-stated issues  
24 regarding his failure to communicate regarding the instant litigation. As  
25 said meeting, I advised HESS that should he continue to not timely  
26 respond to emails and telephone calls from my office, as well as pay his  
27 outstanding invoice for services performed and costs expended on his  
28 behalf by Wednesday, May 15, 2013, then LJLG would have no choice  
but to withdraw as his and HESSGEN, INC.'s counsel of record.

After not responding to additional emails I sent him or returning further  
telephone calls, and after not paying the outstanding invoice as HESS  
agreed at the meeting he had with me on April 29, 2013, I sent final  
correspondence to HESS on May 22, 2013, ... advis[ing] HESS that LJLG  
would be withdrawing as the HESSGEN parties' counsel of record....

As of the date of filing this Motion, HESS has failed to respond to emails  
sent to him by me or LJLG's Paralegal, Stacie Rammelsberg, regarding  
status of the foregoing and has failed to pay the outstanding invoice due  
and owing to LJLG....

Pursuant to Local Civil Rule 83.3(g)(3), I have caused the instant Motion  
to be served on the HESSGEN parties via U.S. Mail and via email to  
BRIAN HESS's last known address and current email address....

I have also served all parties to this action with this Motion via the Court's electronic service as required by Local Civil Rule 83.3(g)(3), and have served *pro per* defendant David Rutkoske via U.S. Mail.

(ECF No. 40-2 at 2-4).

Based upon this record, the Court finds that LJLG and Sharp have complied with the relevant rules of professional conduct. The Court concludes that good cause exists to permit withdrawal. The Motion to Withdraw (ECF No. 40) is **GRANTED**. Within **ten (10) days of the date of this Order**, LJLG shall serve a copy of this Order on Brian Hess and Hessgen, Inc, and file a certificate of that service with the Court. *See* Fed. R. Civ. P. 5.

**Within sixty (60) days of the date of this Order**, Brian Hess shall notify the Court as to whether he will proceed *pro se* or retain new counsel. Pursuant to Local Civil Rule 83.3(k) and federal common law, "[c]orporations and other unincorporated associations must appear in court through an attorney." *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004); *see also United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993). Accordingly, Hessgen, Inc. is **HEREBY NOTIFIED** that it has **sixty (60) days from the date this Order is filed** to obtain new counsel and have counsel file a notice of appearance. Hessgen, Inc. is also notified that if it fails to obtain new counsel and have counsel file a notice of appearance, it may be subject to default proceedings. *See High Country Broadcasting*, 3 F.3d at 1245.

**IT IS SO ORDERED.**

DATED: June 20, 2013

  
**WILLIAM Q. HAYES**  
 United States District Judge